

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL HILTON

Plaintiff,

-v-

WILLIAM BROWN, SUPERINTENDENT,
EASTERN CORRECTIONAL FACILITY

Defendant.
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 29 MAR 2011

MEMORANDUM DECISION
AND ORDER
07 Civ. 8611 (GBD)(MHD)

GEORGE B. DANIELS, District Judge:

Petitioner Michael Hilton seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the imposition of an enhanced sentence of fifteen years to life under New York's "persistent-felony offender" statute, N.Y. Penal Law § 70.10(1).

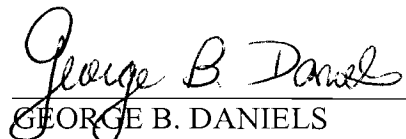
This Court referred the matter to Magistrate Judge Dolinger for his Report & Recommendation. Magistrate Judge Dolinger recommended that the petition be dismissed. Petitioner objected to the Report contending that Magistrate Judge improperly deferred to the New York Court of Appeal's interpretation of the statute and that the statute violated clearly established Federal law.

Recently, the Second Circuit, sitting en banc, determined that the statute at issue was not contrary to or an unreasonable application of Federal law and affirmed the District Court's denial of a writ of habeas corpus. See Portalatin v. Graham, 624 F.3d 69, 92 (2d Cir. 2010), cert denied 2011 WL 196837 (Mar. 21, 2011). Therefore, this Court adopts Magistrate Judge Dolinger's recommendation, which comports with the Second Circuit's holding. The writ is DENIED. The petition is DISMISSED.

As Petitioner has not made a substantial showing of the denial of a federal right, a certificate of appealability will not issue. 28 U.S.C. § 2253; Tankleff v. Senkowski, 135 F.3d 235, 241 (2d. Cir.1998); United States v. Perez, 129 F.3d 255, 259-060 (2d Cir.1997); Lozada v. United States, 107 F.3d 1011 (2d Cir.1997). Moreover, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Malley v. Corporation Counsel of the City of New York, 9 Fed. Appx. 58, 60 (2d Cir.2001).

Dated: March 29, 2011
New York, New York

SO ORDERED:



GEORGE B. DANIELS
United States District Judge